

APPENDIX L
SELECTED PASSAGES FROM THE FLORIDA
STATUTES AND FLORIDA ADMINISTRATIVE
CODE

SELECTED PASSAGES FROM CHAPTER 373, FLORIDA STATUTES

Source: <http://www.leg.state.fl.us/statutes> on October 16, 2001

373.016 Declaration of policy.--

(1) The waters in the state are among its basic resources. Such waters have not heretofore been conserved or fully controlled so as to realize their full beneficial use.

(2) The department and the governing board shall take into account cumulative impacts on water resources and manage those resources in a manner to ensure their sustainability.

(3) It is further declared to be the policy of the Legislature:

(a) To provide for the management of water and related land resources;

(b) To promote the conservation, replenishment, recapture, enhancement, development, and proper utilization of surface and ground water;

(c) To develop and regulate dams, impoundments, reservoirs, and other works and to provide water storage for beneficial purposes;

(d) To promote the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems;

(e) To prevent damage from floods, soil erosion, and excessive drainage;

(f) To minimize degradation of water resources caused by the discharge of stormwater;

(g) To preserve natural resources, fish, and wildlife;

(h) To promote the public policy set forth in s. 403.021;

(i) To promote recreational development, protect public lands, and assist in maintaining the navigability of rivers and harbors; and

(j) Otherwise to promote the health, safety, and general welfare of the people of this state.

In implementing this chapter, the department and the governing board shall construe and apply the policies in this subsection as a whole, and no specific policy is to be construed or applied in isolation from the other policies in this subsection.

(4)(a) Because water constitutes a public resource benefiting the entire state, it is the policy of the Legislature that the waters in the state be managed on a state and regional basis. Consistent with this directive, the Legislature recognizes the need to allocate water throughout the state so as to meet all reasonable-beneficial uses. However, the Legislature acknowledges that such allocations have in the past adversely affected the water resources of certain areas in this state. To protect such water resources and to meet the current and future needs of those areas with abundant water, the Legislature directs the department and the water management districts to encourage the use of water from sources nearest the area of use or application whenever practicable. Such sources shall include all naturally occurring water sources and all alternative water sources, including, but not limited to, desalination,

conservation, reuse of nonpotable reclaimed water and stormwater, and aquifer storage and recovery. Reuse of potable reclaimed water and stormwater shall not be subject to the evaluation described in s. 373.223(3)(a)-(g). However, this directive to encourage the use of water, whenever practicable, from sources nearest the area of use or application shall not apply to the transport and direct and indirect use of water within the area encompassed by the Central and Southern Florida Flood Control Project, nor shall it apply anywhere in the state to the transport and use of water supplied exclusively for bottled water as defined in s. 500.03(1)(d), nor shall it apply to the transport and use of reclaimed water for electrical power production by an electric utility as defined in section 366.02(2).

(b) In establishing the policy outlined in paragraph (a), the Legislature realizes that under certain circumstances the need to transport water from distant sources may be necessary for environmental, technical, or economic reasons.

(5) The Legislature recognizes that the water resource problems of the state vary from region to region, both in magnitude and complexity. It is therefore the intent of the Legislature to vest in the Department of Environmental Protection or its successor agency the power and responsibility to accomplish the conservation, protection, management, and control of the waters of the state and with sufficient flexibility and discretion to accomplish these ends through delegation of appropriate powers to the various water management districts. The department may exercise any power herein authorized to be exercised by a water management district; however, to the greatest extent practicable, such power should be delegated to the governing board of a water management district.

(6) It is further declared the policy of the Legislature that each water management district, to the extent consistent with effective management practices, shall approximate its fiscal and budget policies and procedures to those of the state.

History.--s. 2, part I, ch. 72-299; s. 36, ch. 79-65; s. 70, ch. 83-310; s. 5, ch. 89-279; s. 20, ch. 93-213; s. 250, ch. 94-356; s. 1, ch. 97-160; s. 1, ch. 98-88.

373.036 Florida water plan; district water management plans.--

(1) FLORIDA WATER PLAN.--In cooperation with the water management districts, regional water supply authorities, and others, the department shall develop the Florida water plan. The Florida water plan shall include, but not be limited to:

(a) The programs and activities of the department related to water supply, water quality, flood protection and floodplain management, and natural systems.

(b) The water quality standards of the department.

(c) The district water management plans.

(d) Goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, based on statutory policies and directives. The state water policy rule, renamed the water resource implementation rule pursuant to s. 373.019(20), shall serve as this part of the plan. Amendments or additions to this part of the Florida water plan shall be adopted by the department as part of the water resource implementation rule. In accordance with s. 373.114, the department shall review rules of the water management districts for consistency with this rule. Amendments to the water resource implementation rule must be adopted by the secretary of the department and be submitted to the President of the Senate and the Speaker of the House of Representatives within 7 days after publication in the Florida Administrative Weekly. Amendments shall not become effective until the conclusion of the next regular session of the Legislature following their adoption.

(2) DISTRICT WATER MANAGEMENT PLANS.--

(a) Each governing board shall develop a district water management plan for water resources within its region, which plan addresses water supply, water quality, flood protection and floodplain management, and natural systems. The district water management plan shall be based on at least a 20-year planning period, shall be developed and revised in cooperation with other agencies, regional water supply authorities, units of government, and interested parties, and shall be updated at least once every 5 years. The governing board shall hold a public hearing at least 30 days in advance of completing the development or revision of the district water management plan.

(b) The district water management plan shall include, but not be limited to:

1. The scientific methodologies for establishing minimum flows and levels under s. 373.042, and all established minimum flows and levels.

2. Identification of one or more water supply planning regions that singly or together encompass the entire district.

3. Technical data and information prepared under ss. 373.0391 and 373.0395.

4. A districtwide water supply assessment, to be completed no later than July 1, 1998, which determines for each water supply planning region:
 - a. Existing legal uses, reasonably anticipated future needs, and existing and reasonably anticipated sources of water and conservation efforts; and
 - b. Whether existing and reasonably anticipated sources of water and conservation efforts are adequate to supply water for all existing legal uses and reasonably anticipated future needs and to sustain the water resources and related natural systems.
 5. Any completed regional water supply plans.
- (c) If necessary for implementation, the governing board shall adopt by rule or order relevant portions of the district water management plan, to the extent of its statutory authority.
- (d) In the formulation of the district water management plan, the governing board shall give due consideration to:
1. The attainment of maximum reasonable-beneficial use of water resources.
 2. The maximum economic development of the water resources consistent with other uses.
 3. The management of water resources for such purposes as environmental protection, drainage, flood control, and water storage.
 4. The quantity of water available for application to a reasonable-beneficial use.
 5. The prevention of wasteful, uneconomical, impractical, or unreasonable uses of water resources.
 6. Presently exercised domestic use and permit rights.
 7. The preservation and enhancement of the water quality of the state.
 8. The state water resources policy as expressed by this chapter.
- (3) The department and governing board shall give careful consideration to the requirements of public recreation and to the protection and procreation of fish and wildlife. The department or governing board may prohibit or restrict other future uses on certain designated bodies of water which may be inconsistent with these objectives.
- (4) The governing board may designate certain uses in connection with a particular source of supply which, because of the nature of the activity or the amount of water required, would constitute an undesirable use for which the governing board may deny a permit.
- (5) The governing board may designate certain uses in connection with a particular source of supply which, because of the nature of the activity or the amount of water required, would result in an enhancement or improvement of the water resources of the area. Such uses shall be preferred over other uses in the event of competing applications under the permitting systems authorized by this chapter.
- (6) The department, in cooperation with the Executive Office of the Governor, or its successor agency, may add to the Florida water plan any other information, directions, or objectives it deems necessary or desirable for the guidance of the governing boards or other agencies in the administration and enforcement of this chapter.

History.--s. 6, part I, ch. 72-299; ss. 2, 3, ch. 73-190; s. 122, ch. 79-190; s. 3, ch. 97-160; s. 7, ch. 98-88; s. 164, ch. 99-13.

373.0361 Regional water supply planning.--

(1) By October 1, 1998, the governing board shall initiate water supply planning for each water supply planning region identified in the district water management plan under s. 373.036, where it determines that sources of water are not adequate for the planning period to supply water for all existing and projected reasonable-beneficial uses and to sustain the water resources and related natural systems. The planning must be conducted in an open public process, in coordination and cooperation with local governments, regional water supply authorities, government-owned and privately owned water utilities, self-suppliers, and other affected and interested parties. A determination by the governing board that initiation of a regional water supply plan for a specific planning region is not needed pursuant to this section shall be subject to s. 120.569. The governing board shall reevaluate such a determination at least once every 5 years and shall initiate a regional water supply plan, if needed, pursuant to this subsection.

(2) Each regional water supply plan shall be based on at least a 20-year planning period and shall include, but not be limited to:

(a) A water supply development component that includes:

1. A quantification of the water supply needs for all existing and reasonably projected future uses within the planning horizon. The level-of-certainty planning goal associated with identifying the water supply needs of existing and future reasonable-beneficial uses shall be based upon meeting those needs for a 1-in-10-year drought event.

2. A list of water source options for water supply development, including traditional and alternative sources, from which local government, government-owned and privately owned utilities, self-suppliers, and others may choose, which will exceed the needs identified in subparagraph 1.

3. For each option listed in subparagraph 2., the estimated amount of water available for use and the estimated costs of and potential sources of funding for water supply development.

4. A list of water supply development projects that meet the criteria in s. 373.0831(4).

(b) A water resource development component that includes:

1. A listing of those water resource development projects that support water supply development.

2. For each water resource development project listed:

a. An estimate of the amount of water to become available through the project.

- b. The timetable for implementing or constructing the project and the estimated costs for implementing, operating, and maintaining the project.
- c. Sources of funding and funding needs.
- d. Who will implement the project and how it will be implemented.
- (c) The recovery and prevention strategy described in s. 373.0421(2).
- (d) A funding strategy for water resource development projects, which shall be reasonable and sufficient to pay the cost of constructing or implementing all of the listed projects.
- (e) Consideration of how the options addressed in paragraphs (a) and (b) serve the public interest or save costs overall by preventing the loss of natural resources or avoiding greater future expenditures for water resource development or water supply development. However, unless adopted by rule, these considerations do not constitute final agency action.
- (f) The technical data and information applicable to the planning region which are contained in the district water management plan and are necessary to support the regional water supply plan.
- (g) The minimum flows and levels established for water resources within the planning region.
- (3) Regional water supply plans initiated or completed by July 1, 1997, shall be revised, if necessary, to include a water supply development component and a water resource development component as described in paragraphs (2)(a) and (b).
- (4) Governing board approval of a regional water supply plan shall not be subject to the rulemaking requirements of chapter 120. However, any portion of an approved regional water supply plan which affects the substantial interests of a party shall be subject to s. 120.569.
- (5) By November 15, 1997, and annually thereafter, the department shall submit to the Governor and the Legislature a report on the status of regional water supply planning in each district. The report shall include:
 - (a) A compilation of the estimated costs of and potential sources of funding for water resource development and water supply development projects, as identified in the water management district regional water supply plans.
 - (b) A description of each district's progress toward achieving its water resource development objectives, as directed by s. 373.0831(3), including the district's implementation of its 5-year water resource development work program.
- (6) Nothing contained in the water supply development component of the district water management plan shall be construed to require local governments, government-owned or privately owned water utilities, self-suppliers, or other water suppliers to select a water supply development option identified in the component merely because it is identified in the plan. However, this subsection shall not be construed to limit the authority of the department or governing board under part II.

History.—s. 4, ch. 97-160.

373.042 Minimum flows and levels.--

(1) Within each section, or the water management district as a whole, the department or the governing board shall establish the following:

(a) Minimum flow for all surface watercourses in the area. The minimum flow for a given watercourse shall be the limit at which further withdrawals would be significantly harmful to the water resources or ecology of the area.

(b) Minimum water level. The minimum water level shall be the level of groundwater in an aquifer and the level of surface water at which further withdrawals would be significantly harmful to the water resources of the area.

The minimum flow and minimum water level shall be calculated by the department and the governing board using the best information available. When appropriate, minimum flows and levels may be calculated to reflect seasonal variations. The department and the governing board shall also consider, and at their discretion may provide for, the protection of nonconsumptive uses in the establishment of minimum flows and levels.

(2) By July 1, 1996, the Southwest Florida Water Management District shall amend and submit to the department for review and approval its priority list for the establishment of minimum flows and levels and delineating the order in which the governing board shall establish the minimum flows and levels for surface watercourses, aquifers, and surface water in the counties of Hillsborough, Pasco, and Pinellas. By November 15, 1997, and annually thereafter, each water management district shall submit to the department for review and approval a priority list and schedule for the establishment of minimum flows and levels for surface watercourses, aquifers, and surface waters within the district. The priority list shall also identify those water bodies for which the district will voluntarily undertake independent scientific peer review. By January 1, 1998, and annually thereafter, each water management district shall publish its approved priority list and schedule in the Florida Administrative Weekly. The priority list shall be based upon the importance of the waters to the state or region and the existence of or potential for significant harm to the water resources or ecology of the state or region, and shall include those waters which are experiencing or may reasonably be expected to experience adverse impacts. The priority list and schedule shall not be subject to any proceeding pursuant to chapter 120. Except as provided in subsection (3), the development of a priority list and compliance with the schedule for the establishment of minimum flows and levels pursuant to this subsection shall satisfy the requirements of subsection (1).

(3) Minimum flows or levels for priority waters in the counties of Hillsborough, Pasco, and Pinellas shall be established by October 1, 1997. Where a minimum flow or level for the priority waters within those counties has not been established by the applicable deadline, the secretary of the department shall, if requested by the governing body of any local government within whose jurisdiction the affected waters are located, establish the minimum flow or level in accordance with the procedures established by this section. The department's reasonable costs in establishing a minimum flow or level shall, upon request of the secretary, be reimbursed by the district.

(4)(a) Upon written request to the department or governing board by a substantially affected person, or by decision of the department or governing board, prior to the establishment of a minimum flow or level and prior to the filing of any petition for administrative hearing related to the minimum flow or level, all scientific or technical data, methodologies, and models, including all scientific and technical assumptions employed in each model, used to establish a minimum flow or level shall be subject to independent scientific peer review. Independent scientific peer review means review by a panel of independent, recognized experts in the fields of hydrology, hydrogeology, limnology, biology, and other scientific disciplines, to the extent relevant to the establishment of the minimum flow or level.

(b) If independent scientific peer review is requested, it shall be initiated at an appropriate point agreed upon by the department or governing board and the person or persons requesting the peer review. If no agreement is reached, the department or governing board shall determine the appropriate point at which to initiate peer review. The members of the peer review panel shall be selected within 60 days of the point of initiation by agreement of the department or governing board and the person or persons requesting the peer review. If the panel is not selected within the 60-day period, the time limitation may be waived upon the agreement of all parties. If no waiver occurs, the department or governing board may proceed to select the peer review panel. The cost of the peer review shall be borne equally by the district and each party requesting the peer review, to the extent economically feasible. The panel shall submit a final report to the governing board within 120 days after its selection unless the deadline is waived by agreement of all parties. Initiation of peer review pursuant to this paragraph shall toll any applicable deadline under chapter 120 or other law or district rule regarding permitting, rulemaking, or administrative hearings, until 60 days following submittal of the final report. Any such deadlines shall also be tolled for 60 days following withdrawal of the request or following agreement of the parties that peer review will no longer be pursued. The department or the governing board shall give significant weight to the final report of the peer review panel when establishing the minimum flow or level.

(c) If the final data, methodologies, and models, including all scientific and technical assumptions employed in each model upon which a minimum flow or level is based, have undergone peer review pursuant to this subsection, by request or by decision of the department or governing board, no further peer review shall be required with respect to that minimum flow or level.

(d) No minimum flow or level adopted by rule or formally noticed for adoption on or before May 2, 1997, shall be subject to the peer review provided for in this subsection.

(5) If a petition for administrative hearing is filed under chapter 120 challenging the establishment of a minimum flow or level, the report of an independent scientific peer review conducted under subsection (4) is admissible as evidence in the final hearing, and the administrative law judge must render the order within 120 days after the filing of the petition. The time limit for rendering the order shall not be extended except by agreement of all the parties. To the extent that the parties agree to the findings of the peer review, they may stipulate that those findings be incorporated as findings of fact in the final order.

History.--s. 6, part I, ch. 72-299; s. 2, ch. 73-190; s. 2, ch. 96-339; s. 5, ch. 97-160.

373.0421 Establishment and implementation of minimum flows and levels.--**(1) ESTABLISHMENT.--**

(a) *Considerations.*--When establishing minimum flows and levels pursuant to s. 373.042, the department or governing board shall consider changes and structural alterations to watersheds, surface waters, and aquifers and the effects such changes or alterations have had, and the constraints such changes or alterations have placed, on the hydrology of an affected watershed, surface water, or aquifer, provided that nothing in this paragraph shall allow significant harm as provided by s. 373.042(1) caused by withdrawals.

(b) Exclusions.--

1. The Legislature recognizes that certain water bodies no longer serve their historical hydrologic functions. The Legislature also recognizes that recovery of these water bodies to historical hydrologic conditions may not be economically or technically feasible, and that such recovery effort could cause adverse environmental or hydrologic impacts. Accordingly, the department or governing board may determine that setting a minimum flow or level for such a water body based on its historical condition is not appropriate.

2. The department or the governing board is not required to establish minimum flows or levels pursuant to s. 373.042 for surface water bodies less than 25 acres in area, unless the water body or bodies, individually or cumulatively, have significant economic, environmental, or hydrologic value.

3. The department or the governing board shall not set minimum flows or levels pursuant to s. 373.042 for surface water bodies constructed prior to the requirement for a permit, or pursuant to an exemption, a permit, or a reclamation plan which regulates the size, depth, or function of the surface water body under the provisions of this chapter, chapter 378, or chapter 403, unless the constructed surface water body is of significant hydrologic value or is an essential element of the water resources of the area.

The exclusions of this paragraph shall not apply to the Everglades Protection Area, as defined in s. 373.4592(2)(h).

(2) If the existing flow or level in a water body is below, or is projected to fall within 20 years below, the applicable minimum flow or level established pursuant to s. 373.042, the department or governing board, as part of the regional water supply plan described in s. 373.0361, shall expeditiously implement a recovery or prevention strategy, which includes the development of additional water supplies and other actions, consistent with the authority granted by this chapter, to:

(a) Achieve recovery to the established minimum flow or level as soon as practicable; or

(b) Prevent the existing flow or level from falling below the established minimum flow or level.

The recovery or prevention strategy shall include phasing or a timetable which will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including development of additional water supplies and implementation of conservation and other efficiency measures concurrent with, to the extent practical, and to offset, reductions in permitted withdrawals, consistent with the provisions of this chapter.

(3) The provisions of this section are supplemental to any other specific requirements or authority provided by law. Minimum flows and levels shall be reevaluated periodically and revised as needed.

History.--s. 6, ch. 97-160.

373.223 Conditions for a permit.--

(1) To obtain a permit pursuant to the provisions of this chapter, the applicant must establish that the proposed use of water:

- (a) Is a reasonable-beneficial use as defined in s. 373.019;
- (b) Will not interfere with any presently existing legal use of water; and
- (c) Is consistent with the public interest.

(2) The governing board or the department may authorize the holder of a use permit to transport and use ground or surface water beyond overlying land, across county boundaries, or outside the watershed from which it is taken if the governing board or department determines that such transport and use is consistent with the public interest, and no local government shall adopt or enforce any law, ordinance, rule, regulation, or order to the contrary.

(3) Except for the transport and use of water supplied by the Central and Southern Florida Flood Control Project, and anywhere in the state when the transport and use of water is supplied exclusively for bottled water as defined in s. 500.03(1)(d), any water use permit applications pending as of April 1, 1998, with the Northwest Florida Water Management District and self-suppliers of water for which the proposed water source and area of use or application are located on contiguous private properties, when evaluating whether a potential transport and use of ground or surface water across county boundaries is consistent with the public interest, pursuant to paragraph (1)(c), the governing board or department shall consider:

- (a) The proximity of the proposed water source to the area of use or application.
- (b) All impoundments, streams, groundwater sources, or watercourses that are geographically closer to the area of use or application than the proposed source, and that are technically and economically feasible for the proposed transport and use.
- (c) All economically and technically feasible alternatives to the proposed source, including, but not limited to, desalination, conservation, reuse of nonpotable reclaimed water and stormwater, and aquifer storage and recovery.
- (d) The potential environmental impacts that may result from the transport and use of water from the proposed source, and the potential environmental impacts that may result from use of the other water sources identified in paragraphs (b) and (c).
- (e) Whether existing and reasonably anticipated sources of water and conservation efforts are adequate to supply water for existing legal uses and reasonably anticipated future needs of the water supply planning region in which the proposed water source is located.
- (f) Consultations with local governments affected by the proposed transport and use.
- (g) The value of the existing capital investment in water-related infrastructure made by the applicant.

Where districtwide water supply assessments and regional water supply plans have been prepared pursuant to ss. 373.036 and 373.0361, the governing board or the department shall use the applicable plans and assessments as the basis for its consideration of the applicable factors in this subsection.

(4) The governing board or the department, by regulation, may reserve from use by permit applicants, water in such locations and quantities, and for such seasons of the year, as in its judgment may be required for the protection of fish and wildlife or the public health and safety. Such reservations shall be subject to periodic review and revision in the light of changed conditions. However, all presently existing legal uses of water shall be protected so long as such use is not contrary to the public interest.

History.--s. 3, part II, ch. 72-299; s. 10, ch. 73-190; s. 10, ch. 76-243; s. 35, ch. 85-81; s. 4, ch. 98-88.

373.246 Declaration of water shortage or emergency.--

(1) The governing board or the department by regulation shall formulate a plan for implementation during periods of water shortage. As a part of this plan the governing board or the department shall adopt a reasonable system of water-use classification according to source of water supply; method of extraction, withdrawal, or diversion; or use of water or a combination thereof. The plan may include provisions for variances and alternative measures to prevent undue hardship and ensure equitable distribution of water resources.

(2) The governing board or the department by order may declare that a water shortage exists for a source or sources within all or part of the district when insufficient water is or will be available to meet the present and anticipated requirements of the users or when conditions are such as to require temporary reduction in total use within the area to protect water resources from serious harm. Such orders will be final agency action.

(3) In accordance with the plan adopted under subsection (1), the governing board or the department may impose such restrictions on one or more classes of water uses as may be necessary to protect the water resources of the area from serious harm and to restore them to their previous condition.

(4) A declaration of water shortage and any measures adopted pursuant thereto may be rescinded by the governing board or the department.

(5) When a water shortage is declared, the governing board or the department shall cause notice thereof to be published in a prominent place within a newspaper of general circulation throughout the area. Publication of such notice will serve as notice to all users in the area of the condition of water shortage.

(6) The governing board or the department shall notify each permittee in the district by regular mail of any change in the condition of his or her permit or any suspension of his or her permit or of any other restriction on the permittee's use of water for the duration of the water shortage.

(7) If an emergency condition exists due to a water shortage within any area of the district, and if the department, or the executive director of the district with the concurrence of the governing board, finds that the exercise of powers under subsection (1) is not sufficient to protect the public health, safety, or welfare; the health of animals, fish, or aquatic life; a public water supply; or recreational, commercial, industrial, agricultural, or other reasonable uses, it or he or she may, pursuant to the provisions of s. 373.119, issue emergency orders reciting the existence of such an emergency and requiring that such action, including, but not limited to, apportioning, rotating, limiting, or prohibiting the use of the water resources of the district, be taken as the department or the executive director deems necessary to meet the emergency.

(8) An affected party to whom an emergency order is directed under subsection (7) shall comply immediately, but may challenge such an order in the manner set forth in s. 373.119.

History.--s. 10, part II, ch. 72-299; s. 14, ch. 78-95; s. 11, ch. 82-101; s. 10, ch. 84-341; s. 601, ch. 95-148; s. 168, ch. 99-13.

SELECTED PASSAGES FROM CHAPTER 40E-2, FLORIDA ADMINISTRATIVE CODE

Source: <http://fac.dos.state.fl.us/fac/> on November 13, 2000

CHAPTER 40E-2 CONSUMPTIVE USE

40E-2.010	Review of Consumptive Use Permit Applications.
40E-2.011	Policy and Purpose.
40E-2.031	Implementation.
40E-2.041	Permits Required.
40E-2.051	Exemptions.
40E-2.091	Publications Incorporated by Reference.
40E-2.101	Content of Application.
40E-2.301	Conditions for Issuance of Permits.
40E-2.321	Duration of Permit.
40E-2.331	Modification of Permits.
40E-2.341	Revocation of Permits.
40E-2.351	Transfer of Permits.
40E-2.381	Limiting Conditions.
40E-2.441	Temporary Permits.
40E-2.451	Emergency Authorization.
40E-2.501	Permit Classification.
40E-2.511	Declaration of Water Shortage. (Repealed)
40E-2.521	Change, Suspension or Restriction of Permits During Water Shortage. (Repealed)
40E-2.531	Procedures Under Water Shortage. (Repealed)
40E-2.541	Declaration of Emergency Due to Water Shortage. (Repealed)
40E-2.551	Procedures Under Emergency Due to Water Shortage. (Repealed)

40E-2.010 Review of Consumptive Use Permit Applications.

Consumptive use permit applications are processed pursuant to Section 120.60, F.S., Part VI of Chapter 40E-1, F.A.C., and Chapter 28-107, F.A.C.

Specific Authority 120.54(5), 120.60 FS. Law Implemented 120.54(5), 120.60 FS. History—New 7-2-98.

40E-2.011 Policy and Purpose.

(1) It is the policy of the District to control all water uses within its boundaries, pursuant to the provisions of Chapter 373, Florida Statutes, and Chapter 17-40 and Title 40E, F.A.C.

(2) The rules in this chapter implement the comprehensive water use permit system contemplated in Part II of Chapter 373, Florida Statutes.

(3) Additional rules relating to water use are found in Chapter 40E-20 (General Water Use Permits), Chapter 40E-21 (The Water Shortage Plan), Chapter 40E-22 (Regional Water Shortage Plans) and Chapter 40E-23 (Critical Water Supply Problem Areas).

(4) Standards for the construction, repair and abandonment of water wells are found in Chapter 40E-3 (Water Wells) and Chapter 40E-30 (General Permits for Water Wells).

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.103(1), 373.203, 373.216 – .249 FS. History—New 9-3-81, Formerly 16K-2.01, Amended 7-4-82, 2-24-85, 11-18-91.

40E-2.031 Implementation.

(1) The effective dates for the water use permitting program established in this chapter are:

(a) If the use or withdrawal of water exceeds 100,000 gallons per day, the effective dates are:

1. January 12, 1977, for the portion of the District formerly within the Ridge and Lower Gulf Coast Water Management District,

2. March 2, 1974, for the remainder of the District;

(b) If the use or withdrawal of water does not exceed 100,000 gallons per day, the effective date is January 14, 1979.

(2) The effective dates specified in subsection (1) are used to determine the two year period provided in Section 373.266, Florida Statutes, for existing water users to file initial applications.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.103(1), 373.216, 373.226 FS. History—New 9-3-81, Formerly 16K-2.011.

40E-2.041 Permits Required.

(1) Unless expressly exempt by law or District rule, a water use permit must be obtained from the District prior to any use or withdrawal of water.

(2) The District issues water use permits in two forms, individual water use permits and general water use permits. An individual water use permit may be obtained by meeting the requirements of this chapter. Chapter 40E-20 provides the requirements for qualifying for a general water use permit.

(3) Under certain circumstances the Board or the Executive Director may issue a temporary water use permit pursuant to Rule 40E-2.441 and Section 373.244, Florida Statutes.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.103(1), 373.219, 373.244 FS. History—New 9-3-81, Formerly 16K-2.03(1), (2).

40E-2.051 Exemptions.

No permit is required under Rule 40E-2.041 for the following water uses:

(1) Water used strictly for domestic use at a single family dwelling or duplex provided that the water is obtained from one withdrawal facility for each single family dwelling or duplex.

(2) Water used strictly for fire fighting purposes, and

(3) Water used at a single family dwelling or duplex including but not limited to home lawn and ornamental irrigation, car washing, and other incidental uses provided that the water is obtained from one withdrawal facility for each single family dwelling or duplex.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.219 FS. History—New 9-3-81, Formerly 16K-2.025, Amended 2-24-85, 4-20-94.

40E-2.091 Publications Incorporated by Reference.

(1) The "Basis of Review for Water Use Permit Applications within the South Florida Water Management District – October 1997", is hereby published by reference and incorporated into this chapter.

(2) The document listed in subsection (1) is published by the District and is available from the District upon request.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.219, 373.223, 373.224, 373.229, 373.232, 373.233, 373.236, 373.239 FS. History—New 9-3-81, Formerly 16K-2.035(1), Amended 2-24-85, 11-21-89, 1-4-93, 4-20-94, 11-26-95, 7-11-96, 4-9-97, 12-10-97.

40E-2.101 Content of Application.

(1) Applications for permits required by this chapter shall be filed with the District. The application shall contain:

(a) The following parts of Form 0645 Surface Water Management Permit Applications and/or Water Use Permit Applications, as incorporated by reference in Rule 40E-1.659;

1. Part RC-1A Administrative Information for Surface Water Management Permit Applications and/or Water Use Permit Applications;

2. Part RC-1W Application for a Water Use Permit;

(b) The appropriate permit application processing fee required by Rule 40E-1.607;

(c) The information required in subsection 373.229(1), Florida Statutes; and

(d) Information sufficient to show that the use meets the criteria and conditions established in Rule 40E-2.301.

(2) The application must be signed by the applicant or the authorized agent of the applicant.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.103(1), 373.219, 373.223, 373.229 FS. History—New 9-3-81, Amended 12-1-82, 2-24-85, 11-21-89, Repromulgated 1-4-93, Amended 4-20-94.

40E-2.301 Conditions for Issuance of Permits.

(1) In order to obtain a permit, permit renewal, or permit modification under this chapter, an applicant must give reasonable assurances that the proposed water use at the time the permit application is deemed complete:

(a) will not cause significant saline water intrusion;

(b) will not adversely impact offsite land uses;

(c) will not cause adverse environmental impacts;

(d) will not cause pollution of the water resources;

(e) is otherwise a reasonable-beneficial use as defined in subsection 373.019(4), Florida Statutes, with consideration given to the factors set forth in Rule 17-40.401(2);

(f) will not interfere with presently existing legal uses;

(g) is in accordance with the State Water Policy on water transport pursuant to Rule 17-40.402;

(h) makes use of a reclaimed water source unless the applicant, in any geographic location, demonstrates that its use is either not economically, environmentally or technically feasible; or in areas not designated as Critical Water Supply Problem Areas pursuant to Chapter 40E-23, F.A.C., the applicant demonstrates reclaimed water is not readily available; and

(i) is consistent with Sections 373.016, 373.036, Florida Statutes, and otherwise is consistent with the public interest as prescribed by Chapter 373 and this Chapter.

(2) In order to satisfy the conditions for permit issuance in subsection (1), the permit applicant must provide reasonable assurances that the criteria in the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District – October 1997", incorporated by reference in Rule 40E-2.091(1), are met.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.023, 373.185, 373.219, 373.223, 373.226, 373.236 FS. History—New 9-3-81, Formerly 16K-2.035(2), Amended 2-24-85, 1-4-93, 4-20-94, 7-11-96, 4-9-97, 12-10-97.

40E-2.321 Duration of Permit.

(1) Unless revoked or otherwise modified, the duration of a water use permit issued pursuant to this chapter is the lesser of:

(a) The time period for which the permit applicant demonstrates that water will be available to meet the projected demands and during which the conditions for issuance of a permit in Rule 40E-2.301 will be met.

(b) The time period for which the permit applicant demonstrates legal control.

(2) In addition to the duration limitation in subsection (1) above, the permit durations for specific uses shall not exceed the following time periods:

(a) For public water supply and industrial water uses, the period shall not exceed 10 years.

(b) For dewatering water uses, the period shall not exceed 3 years.

(c) For irrigation uses, the period shall not exceed the basin expiration date as specified in the document described in Rule 40E-2.091 as applicable to the location of the project.

(d) For aquifer remediations, the period shall not exceed that required to complete the operation as specified in the Remedial Action Plan approved by the state or local agency having legal jurisdiction over such activities or 20 years, whichever is less.

(e) For all other uses, the period shall not exceed 10 years.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.236 FS. History—New 9-3-81, Amended 2-24-85, 4-20-94, 7-11-96.

40E-2.331 Modification of Permits.

(1) A permittee shall apply to the Board for approval of any modification of an unexpired permit pursuant to Section 373.239, Florida Statutes. The Executive Director shall initiate proceedings to modify a permit pursuant to Rule 40E-1.609, F.A.C.

(2) Applications for modification, except letter modifications issued pursuant to subsection (4), shall contain the information required in Rule 40E-2.101, will be evaluated using the criteria specified in Rule 40E-2.301 and will be subject to the limiting conditions specified in Rule 40E-2.381. Modifications shall be approved if criteria in Rule 40E-2.301 are met.

(3) Proposed increases in allocation will be treated as new uses to the extent the proposed allocation exceeds the existing allocation.

(4)(a) Modification of an existing water use permit shall be approved by letter, provided the permit is in compliance with all applicable limiting conditions and the modification request:

1. does not result in an increase in the amount of the permit allocation;

2. does not modify the existing permit expiration date, except that when the permit duration is based upon the current lease expiration date, the permit duration shall be extended by letter modification to the new lease date, but shall not exceed the applicable permit duration pursuant to Rule 40E-2.321;

3. does not potentially interfere with any presently existing legal use of water, cause adverse environmental impacts, saltwater intrusion, pollution of the water resources, adverse impacts to offsite land uses, or does not otherwise raise issues requiring a Staff determination of whether such impacts would occur pursuant to the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District – October 1997", incorporated by reference in Rule 40E-2.091(1); and,

4. does not change the permitted withdrawal source(s) or use classification.

5. does not result in a modification of the permit which must be approved by the Governing Board pursuant to Section 373.239(2), F.S.

(b) The timeframes set forth in Rule 40E-1.606 shall apply to the processing of letter modifications.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.223, 373.229, 373.239 FS. History—New 9-3-81, Formerly 16K-2.09(1), Amended 4-20-94, 7-11-96, 4-9-97, 12-10-97.

40E-2.341 Revocation of Permits.

Violations of this chapter may result in the revocation or suspension of the authorization in whole or in part in accordance with the provisions of Chapter 373, including Sections 373.119 and 373.243, F.S., Chapter 120, F.S., and Rules 40E-1.609, and 28-107.004, F.A.C.

Specific Authority 373.044, 373.113 FS. Law Implemented 120.60(6), 373.103(4), 373.219, 373.229 FS. History—New 4-20-94, Amended 7-2-98.

40E-2.351 Transfer of Permits.

A permittee must comply with the requirements of Rule 40E-1.6107 in order to obtain a permit transfer to a new permittee. If the permit transfer is in conjunction with an application for permit modification, the permit shall be transferred at the time of permit modification if all applicable permit transfer criteria are met. Upon approval, all terms and conditions of the permit shall be binding on the transferee.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.223, 373.229, 373.239 FS. History—New 9-3-81, Formerly 16K-2.09(2), Amended 4-20-94.

40E-2.381 Limiting Conditions.

The Board shall impose on any permit granted under this chapter such reasonable standard and special permit conditions as are necessary to assure that the permitted use or withdrawal will be consistent with the overall objectives of the District, will not be harmful to the water resources of the District, is reasonable-beneficial, will not interfere with any presently existing legal uses, and is consistent with the public interest. Standard permit conditions in Section 5.1 of the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District – October 1997", incorporated by reference in Rule 40E-2.091(1) shall be set forth in the permit. Special permit conditions, including those specified in Section 5.2 of the "Basis of Review for Water Use Permit Applications within the South Florida Water Management District – October 1997", shall be set forth in the permit.

Specific Authority 373.044, 373.113, 373.171 FS. Law Implemented 373.219(1) FS. History—New 9-3-81, Amended 2-24-85, 7-26-87, 4-20-94, 7-11-96, 4-9-97, 12-10-97.

40E-2.441 Temporary Permits.

The Board or the Executive Director may issue temporary water use permits under the provisions of Section 373.244, Florida Statutes.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.244 FS. History—New 9-3-81, Amended 4-20-94.

40E-2.451 Emergency Authorization.

(1) Permission to begin use, withdrawal, or diversion of water prior to the issuance of a permit may be applied for in writing, when emergency conditions exist which would justify such permission. However, no such permission shall be granted unless the use, withdrawal, or diversion is already being considered for a permit under Rule 40E-2.041. A serious set of unforeseen or unforeseeable circumstances must exist to create an emergency. Mere carelessness or lack of planning on the part of the applicant shall not be sufficient grounds to warrant the granting of emergency authorization.

(2) Emergency authorizations shall be administered pursuant to Rule 40E-1.6115, F.A.C.

Specific Authority 373.044, 373.113 FS. Law Implemented 120.60(5), 373.219 FS. History—New 9-3-81, Formerly 16K-2.11, Amended 4-20-94, 7-2-98.

40E-2.501 Permit Classification.

Each water use permit shall be classified according to source, use and method of withdrawal. The source use and method of withdrawal classes are listed in Rules 40E-21.611 through 40E-21.691.

Specific Authority 373.044, 373.113 FS. Law Implemented 373.246 FS. History—New 9-3-81, Formerly 16K-2.12(2), Amended 7-4-82.

